



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: OCTOBER 3, 2006

ITEM NO:

**SUBJECT:** APPEAL OF PLANNING APPLICATION PA-06-34  
3067 BRISTOL STREET (CIRCLE K)

**DATE:** SEPTEMBER 21, 2006

**FROM:** DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION

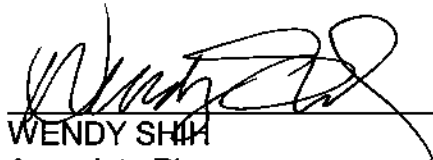
**PRESENTATION BY:** WENDY SHIH, ASSOCIATE PLANNER

**FOR FURTHER INFORMATION CONTACT:** WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

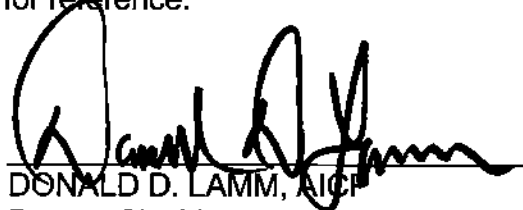
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## **BACKGROUND**

The subject application was continued from the September 5, 2006, meeting as requested by the applicant to allow additional time to prepare for a presentation. The original staff report and updated resolutions are attached for reference.

  
WENDY SHIH

Associate Planner

  
DONALD D. LAMM, AICP

Deputy City Mgr. – Dev. Svs. Director

**Attachments:** City Council Agenda Report dated September 5, 2006  
Zoning/Location Map  
Plans  
Photo Exhibit  
Draft City Council Resolution  
Exhibit "A" – Draft Findings  
Exhibit "B" – Draft Conditions of Approval  
Appeal Application  
Minutes of Planning Commission meeting of July 24, 2006  
Planning Division Staff Report  
Planning Commission Resolution  
Exhibit "A" – Findings  
Exhibit "B" - Conditions

**Distribution:** City Manager  
Assistant City Manager  
Acting City Attorney  
Deputy City Mgr., Dev. Svs. Dir.  
Public Service Director  
City Clerk (2)  
Staff (4)  
File (2)

Conoco Phillips  
3611 Harbor Blvd.  
Costa Mesa, CA 92626

Greg Fick  
Tait and Associates, Inc.  
701 N. Parkcenter Dr.  
Santa Ana, CA 92705

File: 100306PA0634Appeal	Date: 092106	Time: 1: 45 p.m.
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# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: SEPTEMBER 5, 2006

ITEM NO:

**SUBJECT: APPEAL OF PLANNING APPLICATION PA-06-34  
3067 BRISTOL STREET (CIRCLE K)**

**DATE: AUGUST 24, 2006**

**FROM: DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION**

**PRESENTATION BY: WENDY SHIH, ASSOCIATE PLANNER**

**FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136**

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## **RECOMMENDED ACTION**

Conduct public hearing and adopt resolution to uphold, reverse, or modify Planning Commission's decision.

## **BACKGROUND**

On March 13, 2000, Planning Commission approved a conditional use permit (PA-99-49) to convert service bays of the gasoline station to a convenience store, but denied the request for concurrent sales of beer and wine with vehicle fuel. The applicant appealed Commission's denial of alcohol sales and, on April 17, 2000, City Council reversed the Commission's decision and approved concurrent sales. However, Council added conditions prohibiting sales of single servings of alcoholic beverages and exterior advertisement of alcoholic beverages. In May 2006, the applicant filed a request to delete those two conditions (PA-06-34).

At their meeting on July 24, 2006, by a vote of 3 to 2 (Donn Hall and James Fisler voted no), Planning Commission denied Planning Application PA-06-34. On July 31, 2006, the applicant appealed because he feels the business is operating at a competitive disadvantage to other convenience stores in the area, their inability to meet customer requests for single servings of alcohol, and because many alcoholic beverages are only sold to retailers in single serving packaging.

## **ANALYSIS**

Conditions prohibiting the sale of single servings of alcohol and exterior advertisement of alcoholic beverages are routinely applied to conditional use permits whenever sales of alcoholic beverages are proposed at a convenience store. The intent of the standard conditions is to minimize potential impacts on other properties and to protect the health, safety, and welfare of the public.

The property is located within an area of "undue concentration", because crime exceeds 20 percent of the City-wide average crime rate and the ratio of ABC licenses to population within the census tract exceeds the countywide ratio (4 allowed; 10 existing). Although approval of the request would not increase the number of off-sale ABC licenses in the area,

Planning Commission found that allowing concurrent sales and exterior advertising of alcoholic beverages could encourage illegal activities such as drinking and driving, and/or disturbances to other properties due to loitering because single servings of alcohol tend to be purchased for immediate consumption.

The applicant indicated there are many other convenience stores in Costa Mesa that sell single servings of alcohol and have exterior advertisement of alcoholic beverages. However, these convenience stores could have been established before Planning Commission and City Council routinely added conditions regulating single sales and exterior advertising for convenience stores. Since 1997, the only application for sale of single servings of alcohol was for the re-establishment of a liquor store at 1525 Mesa Verde Drive East, Suite 129, which was approved by City Council on appeal.

### **ALTERNATIVES CONSIDERED**

If the Planning Commission's decision is upheld, the gasoline station with convenience store can continue to operate under the existing conditional use permit.

If the Planning Commission's decision is reversed, concurrent sales of single servings of alcohol and/or exterior advertising of alcoholic beverages would be allowed.

### **FISCAL REVIEW**

Fiscal review is not required.

### **LEGAL REVIEW**

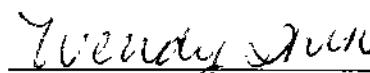
Legal review is not required.


### **ENVIRONMENTAL REVIEW**

Pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines, this project is exempt from CEQA.

### **CONCLUSION**

Planning Commission found that allowing concurrent sales of single servings of alcohol and exterior advertising of alcoholic beverages would be materially detrimental to the health, safety, and general welfare of the public or properties within the immediate vicinity.

  
WENDY SHIH  
Associate Planner *dy 7/26/00*

  
DONALD D. LAMM, AICP  
Deputy City Mgr. – Dev. Svs. Director

Attachments: Zoning/Location Map  
Plans  
Photo Exhibit  
Draft City Council Resolution  
Exhibit "A" – Draft Findings  
Exhibit "B" – Draft Conditions of Approval  
Appeal Application  
Minutes of Planning Commission meeting of July 24, 2006  
Planning Division Staff Report  
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Distribution: City Manager  
Assistant City Manager  
Acting City Attorney  
Deputy City Manager-Development Svs. Dir.  
Public Service Director  
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Conoco Phillips  
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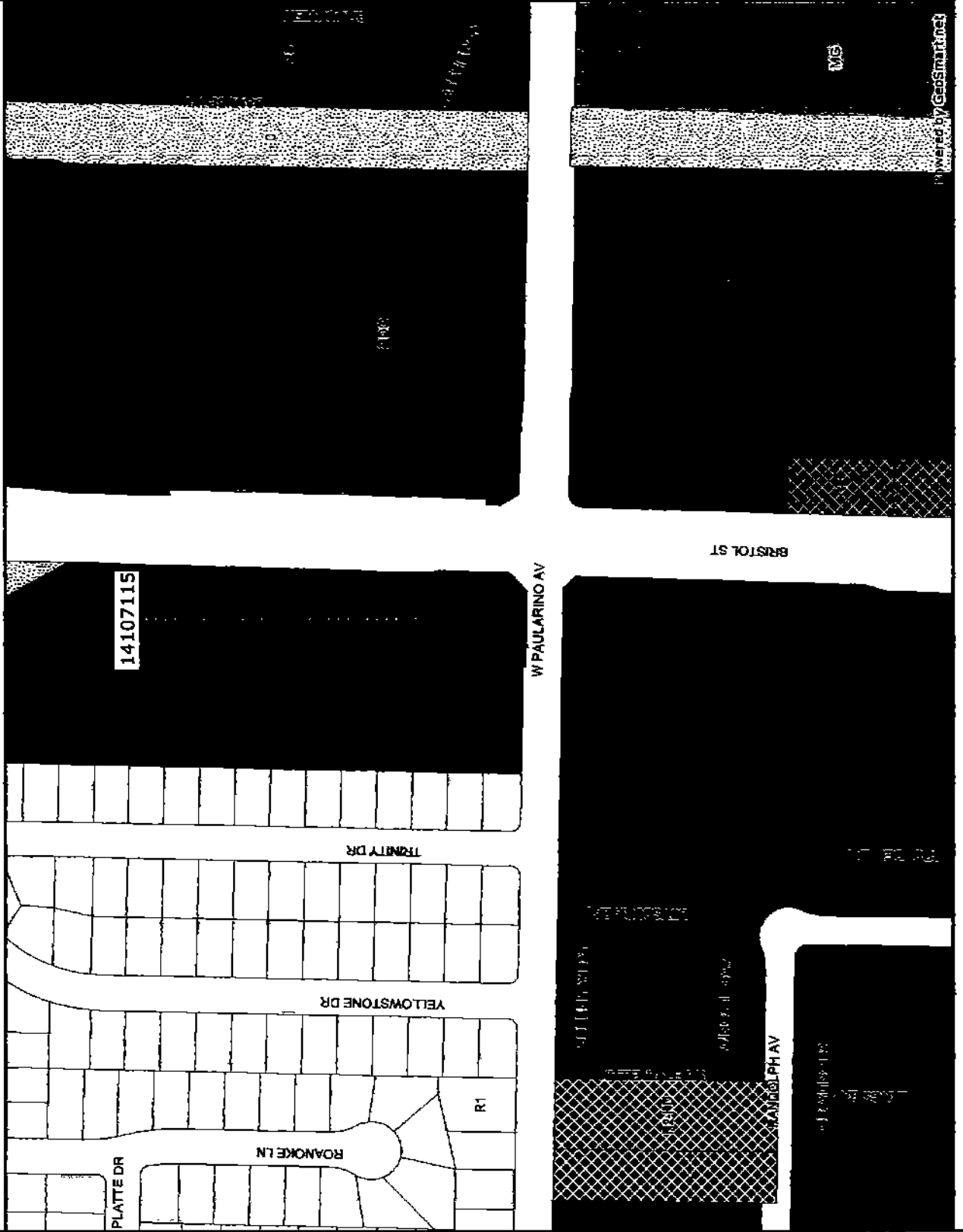
File: 090506PA0634Appeal	Date: 081606	Time: 11:30 a.m.
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# ZONING/LOCATION MAP

3067 Bristol Street







- Legend**
- Selected Features
  - Street Names
  - Parcel Lines
  - City Boundary
  - Zoning

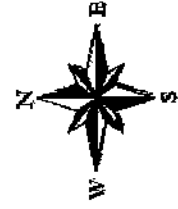
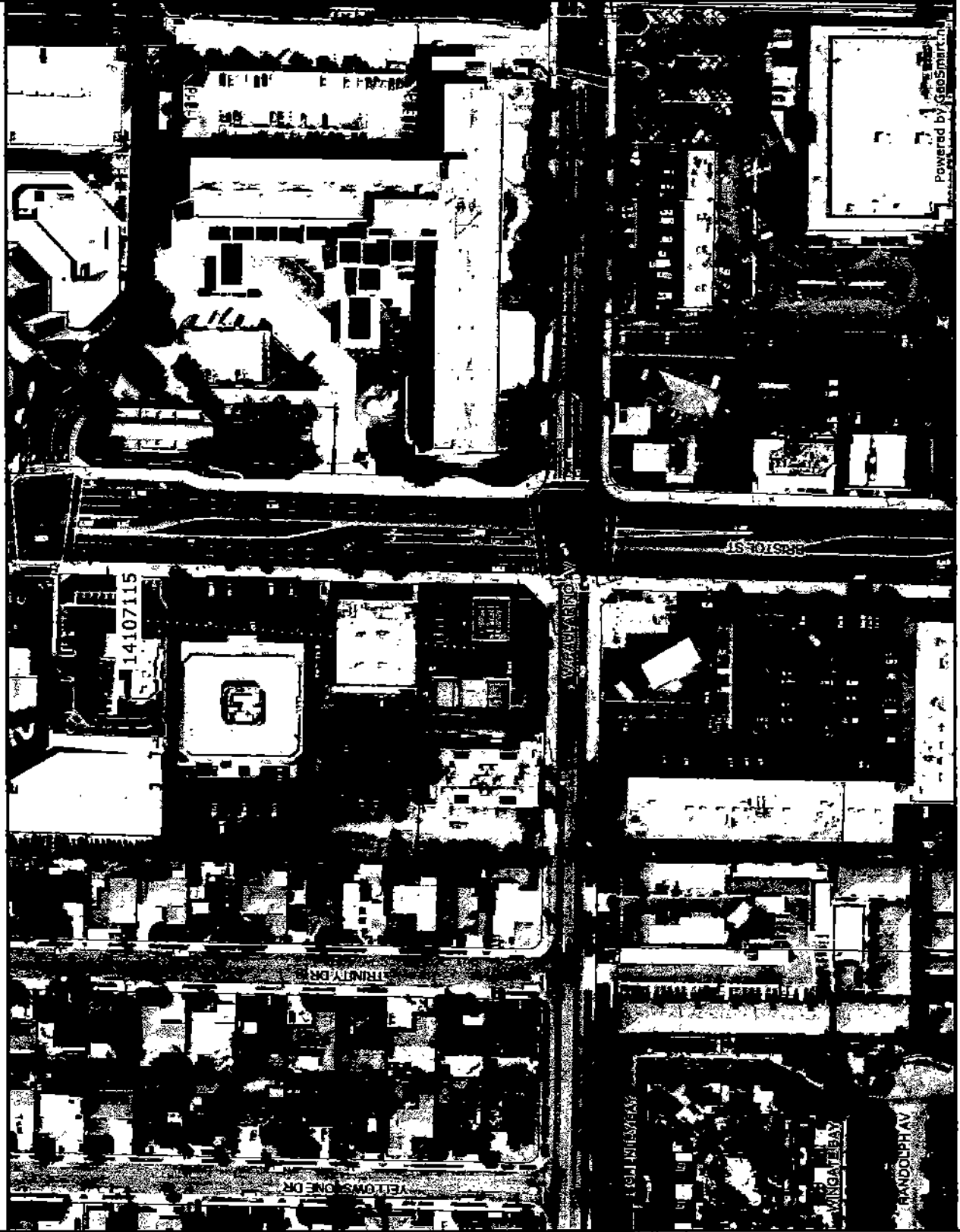
- AP
- C1
- C1-S
- C2
- CL
- IAR
- IAR-S
- MG
- MP
- P
- PDC
- POI
- PDR-HD
- PDR-LD
- PDR-MD
- PDR-NCM
- R1
- R2-HD
- R2-MD
- R3
- TC
- Parcels



# 3067 Bristol Street

## Legend

-  Selected Features
-  Street Names
-  Parcel Lines
-  City Boundary
-  Ortho Photography
-  Parcels









RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COSTA MESA DENYING PLANNING APPLICATION PA-06-**

**34**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS  
FOLLOWS:

WHEREAS, an application was filed by Greg Fick of Tait and Associates, Inc. for Conoco Phillips, owner of real property located at 3067 Bristol Street, requesting to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline and to allow exterior advertisement of alcoholic beverages, in the C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 24, 2006, and PA-06-34 was denied by Planning Commission; and

WHEREAS, the item was appealed by Mike McFarland of Tait and Associates, Inc. to the City Council on July 31, 2006; and

WEREAS, the item was continued from the September 5, 2006, meeting; and

WHEREAS a duly noticed public hearing was held by the City Council on  
October 3, 2006;

NOW, THEREFORE, BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council of the City of Costa Mesa hereby **DENIES** Planning Application PA-06-34 with respect to the property described above.

**PASSED AND ADOPTED this 3<sup>rd</sup> day of October 2006.**

\_\_\_\_\_  
Mayor of the City of Costa Mesa

ATTEST:

\_\_\_\_\_  
Deputy City Clerk of the City of Costa Mesa

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COSTA MESA APPROVING PLANNING APPLICATION PA-06-  
34**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS  
FOLLOWS:

WHEREAS, an application was filed by Greg Fick of Tait and Associates, Inc. for Conoco Phillips, owner of real property located at 3067 Bristol Street, requesting to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline and to allow exterior advertisement of alcoholic beverages, in the C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 24, 2006, and PA-06-34 was denied by Planning Commission; and

WHEREAS, the item was appealed by Mike McFarland of Tait and Associates, Inc. to the City Council on July 31, 2006; and

WEREAS, the item was continued from the September 5, 2006, meeting; and

WHEREAS a duly noticed public hearing was held by the City Council on October 3, 2006;

NOW, THEREFORE, BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council of the City of Costa Mesa hereby **APPROVES** Planning Application PA-06-34 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Planning Application PA-06-34 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

**PASSED AND ADOPTED this 3<sup>rd</sup> day of October 2006.**

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Mayor of the City of Costa Mesa

STATE OF CALIFORNIA)  
COUNTY OF ORANGE )ss  
CITY OF COSTA MESA )

I, Julie Folcik, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 3<sup>rd</sup> day of October 2006.

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Deputy City Clerk and ex-officio Clerk of the  
City Council of the City of Costa Mesa

**EXHIBIT "A" (DENIAL)****FINDINGS**

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is not compatible with developments in the same general area. Granting the conditional use permit amendment will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, allowing single servings of beer and wine to be sold in conjunction with gasoline sales and exterior advertising for alcoholic beverages could encourage illegal activities such as drinking and driving, and/or disturbances to other properties in the vicinity due to loitering because single servings of alcohol tend to be purchased for immediate consumption.
- B. The convenience store use is consistent with the general commercial General Plan land use designation, which allows commercial uses that serve both local and regional needs. Approval of the amendments to the conditional use permit will not affect the General Plan consistency of the use.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- D. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

**EXHIBIT "A" (APPROVAL)****FINDINGS**

- A. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.
- B. The convenience store use is consistent with the general commercial General Plan land use designation, which allows commercial uses that serve both local and regional needs. Approval of the amendments to the conditional use permit will not affect the General Plan consistency of the use.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- D. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

**EXHIBIT "B"**

**CONDITIONS OF APPROVAL (If application is approved)**

- Plng.
1. Comply with all conditions of approval of PA-99-49 (attached) except numbers 17, 18, and 20 (deleted).
  2. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.

**EXHIBIT "B"**  
**(Sales of alcoholic beverages permitted)**

**CONDITIONS OF APPROVAL**

- Plng. 1. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable
2. All new construction shall be architecturally compatible with regard to building materials, style, colors, etc. with the existing structure. Plans submitted for plan check shall indicate how this will be accomplished.
3. The conditions of approval and ordinance or code provisions of planning application PA-99-49 shall be blueprinted on the face of the site plan.
4. The applicant shall contact the Planning Division to arrange for a "special requirements" inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
5. Applicant shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering.
6. Applicant shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcohol beverages.
7. Every 2 hours, from 4:00 p.m. to closing, the applicant shall patrol the area over which the applicant has control in an effort to prevent the loitering of persons about the premises. The applicant shall make reasonable efforts to prevent loitering during other hours the business is open.
8. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas under which applicant has control, to prevent trash, graffiti and littering. Any lighting under the control of applicant shall be directed in such a manner so as not to unreasonably interfere with the quiet enjoyment of nearby residences. Applicant shall further provide adequate lighting above the entrance to the premises sufficient in



intensity to make visible the identity and actions of all persons entering and leaving the premises.

9. Exterior public telephones shall be equipped to prohibit incoming calls.
10. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured.
11. The applicant shall maintain free of litter all areas of the premises under which applicant has control.
12. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
13. Prior to alcohol sales at this location, the applicant shall purchase and transfer an existing Alcoholic Beverage Control license from a location within the City limits of Costa Mesa.
14. Alcoholic beverage sales shall be limited to only beer and wine.
15. No wine shall be sold with an alcoholic content of greater than 15% by volume except for "dinner wines" which have been aged 2 years or more and maintained in corked bottles.
16. Wine shall not be sold in bottles or containers smaller than 750 milliliters.
- ~~17. No sale of beer in single cans or bottles (any size) shall be permitted. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of 2 or more gallons, which are clearly designed to dispense multiple servings.~~
- ~~18. Beer, malt beverages, wine coolers or pre-mixed distilled spirit cocktails (if allowed by the license) packed in 16-ounce containers or smaller, may not be sold as single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.~~
19. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
- ~~20. Exterior advertising shall comply with the City's sign regulations, and exterior advertisements shall be prohibited which indicate the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible from the exterior at the closest public street or sidewalk, shall constitute a violation of this condition.~~
- Police 21. A list of security recommendations has been provided by the Police Department for the applicant's consideration.
- Eng. 22. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
- Trans. 23. Close the easterly drive approach on Pularino Avenue with full height curb and gutter per City standard and construct raised curb planter on-site in the setback area.

24. Reconstruct the westerly drive approach on Paularino to a 35 to 50 foot maximum width with commercial wide flare and modify raised curb planters to suit.
25. The site operator and employees will be required to attend, participate, and successfully complete training program which will include and is not limited to training segments on safety, accident prevention, robbery deterrence, personal safety responsible tobacco retailing, loitering deterrence, effective alcohol management, facility maintenance and litter control. All facility personnel will be required to participate in quarterly reviews.
26. No sale of beer and wine shall be made from a drive-in window.
27. A sign shall be posted in the window to identify that the cash register contains \$50.00 or less in cash and the drop safe is not accessible to the employee.
28. The public restroom shall be available for public use while the food mart is open for business.
29. The food mart shall be equipped with a security camera that is capable of receiving an image on film or tape that can be made a permanent record and that can be enlarged through projection or other means. Cameras will be maintained in proper working order at all times.
30. All improvements on the property shall be continuously maintained, including repairs to structures and replacement of dead or diseased plant material.
31. Signs and curb painting shall be utilized on-site to encourage parking in designated parking areas.
32. During business hours, police department personnel shall be given full access to the store's office and communication facilities for the purpose of conducting police business.
33. Applicant shall surrender the alcoholic beverage control license for the Circle K at Sunflower Avenue and Fairview Road. Approval of an alcoholic beverage control license for this use shall be limited to a premises-to-premises transfer from another location within the same census tract.

07/25/2006

09:04

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714-7544942

CITY CLERKS OFFICE

PAGE 01

2006 JUL 31 PM 2:55

CITY OF COSTA MESA

P. O. Box 1200

CITY OF COSTA MESA Costa Mesa, CA 92628-1200

FEE: \$ 1,070.00

BY

**APPLICATION FOR REVIEW, APPEAL OR REHEARING**

Applicant Name Mike MacFarland

Address 701 North Parkcenter Drive, Santa Ana, CA

Phone 714-560-8200

Representing Conoco Phillips

REQUEST FOR: ☐ REVIEW\*\*

☒ APPEAL

☐ REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Planning Commission Resolution PC-06-54. (Planning Application PA-06--34)

Decision date July 24, 2006.

Decision by: Planning Commission

Reasons for requesting review, appeal or rehearing:

- 1) Conoco Phillips is currently operating at a competitive disadvantage to other convenience and liquor stores in the surrounding neighborhood and throughout the City by not allowing singles to be sold at this store.
- 2) Conoco Phillips has received numerous customer requests for singles.
- 3) Many of the alcoholic beverages that customers have been requesting are only sold to retailers as singles.

Date: 7-31-06

Signature: [Signature]

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:  
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

- \* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
  - \*\* Review may be requested only by City Council or City Council Member
- Costa Mesa/Form 11/Application for Review-Appeal-Rehearing

**REGULAR MEETING OF THE CITY OF  
COSTA MESA PLANNING COMMISSION**

**July 24, 2006**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., July 24, 2006 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Bill Perkins, followed by the Pledge of Allegiance to the Flag.

**ROLL CALL:**

Commissioners Present:

Chairman Bill Perkins  
Vice Chair Donn Hall  
Eleanor Egan  
James Fisler  
Bruce Garlich

Also Present: R. Michael Robinson, Secretary  
Costa Mesa Planning Commission  
Ernesto Munoz, City Engineer  
Wendy Shih, Associate Planner

**MINUTES:**

The minutes for the meeting of June 26, 2006 were accepted as corrected; the minutes for the meeting of July 10, 2006 were continued the meeting of August 14, 2006.

**PUBLIC COMMENTS:**

None.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

Commissioner Fisler said his friend's son, Sergeant Craig Isham who was previously on a tour of duty in Iraq, was home for about a year when he and his wife Amy welcomed their newborn, John Riley Isham into the family. Commissioner Fisler said to update the community, friends, and listening audience since the December 12, 2005 meeting, Craig will be taking his second tour of duty over seas and leaves today. On behalf of everyone who has been following this story, he wished the Isham family all the best and said they know our prayers are with them. He thanked everyone in the 25<sup>th</sup> Infantry Division and all those who have sacrificed so much for their country.

The Chair wished his wife a "Happy Anniversary." He also relayed a story about an Israeli friend and hoped that we would all stop and think about what we are grateful for in these times and be encouraged to do that often.

**PUBLIC HEARINGS:**

**PLANNING APPLICATION  
PA-06-34**

Conoco Phillips/Tait & Assoc.

The Chair opened the public hearing for consideration of Planning Application PA-06-24 for Greg Fick of Tait and Associates, Inc., authorized agent for Conoco Phillips, to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline, and to allow exterior advertisement for alcoholic beverages, located at 3067 Bristol Street, in a C1 zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and made a presentation. She said staff was recommending denial by adoption of Planning Commission resolution.

In response to a question from Commissioner Garlich concerning the absence of Police Department correspondence in the staff report, Ms. Shih stated they had no objections via an e-mail response and verbal communication.

Commissioner Garlich stated that page 3 of the staff report notes that these standard conditions were adopted in 1997 and were recognized in 2002 under Ordinance 01-30 amending the zoning code and asked if the Commission has the authority to act on this request. Planning Commission Secretary R. Michael Robinson explained that they are embodied in an ordinance by reference only in Section 13-200.72 which states that the City Council may adopt development operational standards for liquor stores, convenience stores, and mini-markets that may be applied on a

case-by-case basis. The final review authority may use these standards to impose conditions of approval on the use to insure findings contained in Chapter III, Planning Applications—CUP Findings.

There was discussion between Commissioner Egan and Ms. Shih confirming that statistics show the crime rate in that census tract is 20% above the City-wide average crime rate.

There was discussion between the Chair and Ms. Shih regarding excess ABC licenses within an area of undue concentration and where crime exceeds 20 percent of the City-wide average crime rate.

Vice Chair Hall discussed other areas that would also exceed the county-wide ratio such as South Coast Plaza. He also confirmed with staff that condition of approval #18 says that you can buy a 6-pack of beer.

Mike MacFarland, authorized agent with Tait and Associates, 701 North Park Center Drive, Santa Ana, agreed to the conditions of approval and thanked staff for all their efforts. Mr. MacFarland discussed several points to convince the Commission to approve their request: (1) They have been at this location for 6 years and have proven themselves to be a reliable and respected business in the community. (2) Continual and numerous requests from customers prompted this request. (3) No ABC violations or police calls for major issues have been reported or on file with CMPD.

Mr. MacFarland asked, "how does the crime rate and concentration of alcohol licenses compare with other large census tracts in a commercial area?" Ms. Shih said the information exists, but she did not have it available at this meeting. The Chair requested an estimate of the number of census tracts that tend to run in over concentration of ABC licenses. Ms. Shih felt that it could be approximately 50%. Mr. Robinson added that the graphic, which was displayed on the screen showing the High Crime Areas, denotes that high crime areas are primarily in commercial uses, but it also shows an area east of Newport Boulevard as primarily residential, but has an over concentration in that tract; Harbor Boulevard has a high concentration of the eastside of the street; and the west side of the street does not.

Continuing his presentation, Mr. MacFarland stated that security issues have been recognized and taken care of; there are no incidents of loitering; and they keep their alcohol training program updated.

Mr. MacFarland said his last issue is that staff references single sales as promoting drinking problems and drinking and driving and wanted to know how staff came to this conclusion. Ms. Shih explained that it is staff's opinion that having single sales would encourage drinking and driving, whether or not it is sold with gasoline. Further, she said it is staff's opinion, that because of the higher traffic count coming in and out, it has a higher potential for drinking and driving. Mr. MacFarland said that when single sales were offered to the other liquor store (Mesa Verde), staff's comments were that they were stopping by and then drinking their single purchase on their way to the golf course. In response to a question from Commissioner Garlich concerning the exterior advertising and the preference between that and the single sales, Mr. MacFarland said he believed the client would much rather have the single sales. Commissioner Garlich and Commissioner Egan agreed on their recollection of the "golf course" connection.

Conoco Phillips representative Susan Clark, in response to questions by the Chair concerning employee training, detailed a list of training procedures and rules used in the class for all new employees.

Commissioner Egan said to her, it seems extremely unlikely that someone will buy a single can to take home and refrigerate until later. She asked if Conoco takes the position that if a person who drives up and buys a single can of beer in preference to a six-pack, is not buying it for immediate consumption. Ms. Clark said she could not say that, but in the same respect, if she buys a six-pack, it doesn't stop her from taking it

home, but she can also open a can right there inside of her car as well; she believed that either way, it's not going to stop someone from drinking and driving. She said that's their choice when they walk in. Commissioner Egan said there is no question about that, the question is what are we encouraging? There is no question that when a single container is purchased, it's for immediate consumption.

Mr. MacFarland wished to make a final comment that in 2000 when the site was redesigned, in order to obtain their CUP for liquor sales, Conoco did reduce the amount of liquor licenses available by two in that census tract by closing down another store they owned and purchasing another existing license within that tract. He said his point was to make the Commission aware that Conoco is a responsible establishment.

No one else wished to speak and the Chair closed the public hearing.

Vice Chair Hall commented that people are going to drink irresponsibly (drink and drive), no matter how you limit their availability of liquor. He said he would rather see someone buy a single can if they are going to drink and drive, which they shouldn't, and go off with one can rather than buy a six-pack and drive-drinking one can of beer after another; arguments can be made on both sides of this issue. He felt for government to start controlling the behavior of the citizens of this country is absurd. He felt that with the way things are going, there is a good probability that these beverages will be sold in packages of two. He felt the social control of the citizens of this country is ridiculous, and reminded everyone that was tried with prohibition. In closing, he said if people can't buy at this location, they'll find another location that does.

MOTION:  
PA-06-34  
Vote was not called  
(See motion below)

A motion was made by Vice Chair Hall, seconded by Commissioner Fisler to approve Planning Application PA-06-34, finding that limitations on people's freedom is not going to stop them from doing something improper, subject to the conditions of approval as listed on page 8.

Commissioner Fisler commented that he did not agree with the statement for not selling singles is because it encourages drinking. For example, if he is bringing refreshments to another house for a dinner where someone wants Dr. Pepper, another person wants a beer, another milk, etc., he would prefer not to have to buy six-packs, so in this case, he would find another store where single containers are sold; he may want gas at the same time and it would be convenient to have that availability. He said this is not an additional off-site license so he will support the motion because he believes it is a responsible business, and further, the Police Department had no objections.

SUBSTITUTE MOTION  
PA-06-34  
Denied

A substitute motion was made by Chair Perkins, seconded by Commissioner Egan and carried 3-2 (Hall and Fisler voted no) to deny Planning Application PA-06-34, by adoption of Planning Commission Resolution PC-06-54 based on information and analysis in the Planning Division staff report, and findings contained in exhibit "A."

The Chair said he sees a movement to make allowances where it was not done before. He felt that single container sales encouraged drinking and driving.

Commissioner Garlich said he believes that Conoco runs a tight ship and has a good record and commended them and thanked them. However, he did agree with Commissioner Egan and could not imagine that anybody who buys a single container of an alcoholic beverage buys it to take it home and use it later. He said he also felt that Vice Chair Hall and Commissioner Fisler also had valid comments and this has been a debate going on for a long time. Nine years ago this City chose to err on the side of caution, and the only exception was under special circumstances where there was a business that was reopening in a competitive environment, and he believed it was the rationale of the Council to allow that to occur. It is the only time it has occurred.

The Vice Chair asked if any of the surrounding cities have an ordinance that prohibits the sale of single container alcoholic beverages. Staff did

not know.

The Chair explained the appeal process.

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:**

~~Mr. Robinson announced two upcoming meetings for the Planning Commission: (1) A mandatory training session scheduled for August 8, 2006 in Conference Room 1A at 6:30 p.m. for approximately 2 hours; and (2) A Community Workshop on the North Costa Mesa high-rise residential towers by staff is tentatively scheduled for Monday, August 7<sup>th</sup> (or Wednesday, August 9<sup>th</sup>) at 6:30 p.m. in the Council Chambers.~~

**REPORT OF THE CITY ATTORNEY'S OFFICE:**

~~None.~~

**ADJOURNMENT:**

There being no further business, Chairman Perkins adjourned the meeting at 8:53 p.m. to the training session of Monday, August 8, 2006.

Submitted by:

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R. MICHAEL ROBINSON, SECRETARY  
COSTA MESA PLANNING COMMISSION



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: JULY 24, 2006

*DT.1*  
ITEM NUMBER:

SUBJECT: PLANNING APPLICATION PA-06-34  
3067 BRISTOL STREET

DATE: JULY 13, 2006

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

## **PROJECT DESCRIPTION**

The applicant is requesting approval to amend a previously approved conditional use permit (PA-99-49) allowing concurrent sales of beer and wine with gasoline, to allow sales of beer and wine in single containers and to allow exterior advertisement of alcoholic beverages.

## **APPLICANT**

Greg Fick of Tait and Associates, Inc. is representing the property owner, Conoco Phillips.

## **RECOMMENDATION**

Deny by adoption of Planning Commission resolution.

  
WENDY SHIH  
Associate Planner

  
R. MICHAEL ROBINSON, AICP  
Asst. Development Services Director



**BACKGROUND**

The subject site is located on the northwest corner of Paularino Avenue and Bristol Street. On March 13, 2000, Planning Commission approved Conditional Use Permit PA-99-49 to convert service bays of the gasoline station to a convenience store but denied the concurrent sales of beer and wine with gasoline. The applicant appealed the decision to deny alcohol sales and on April 17, 2006, City Council approved the application including concurrent sales of beer and wine with gasoline. Conditions 17 and 18 were included to prohibit sale of single servings of alcohol and condition number 20 prohibits exterior advertisement for alcoholic beverages.

The applicant is requesting to amend Conditional Use Permit PA-99-49 to delete conditions 17, 18, and 20, which would allow concurrent sales of beer and wine in single serving containers at the gas station, as well as to allow exterior advertisement of alcoholic beverages.

**DISCUSSION**

These three conditions of approval are routinely applied whenever sales of alcoholic beverages are proposed at a mini-market or convenience store – whether or not combined with sales of gasoline. The intent of the standard conditions of approval is to minimize potential impacts on other properties in the vicinity and to protect the health, safety and general welfare of the public. It is staff's opinion that single servings of beer and wine tend to be purchased for immediate consumption. Allowing single servings of alcohol to be sold at a gas station would seem to encourage illegal drinking and driving. It could also encourage immediate consumption of alcohol and loitering on- or off-site on adjoining properties. It is staff's opinion that allowing exterior advertising of beer and wine would further encourage the sales of alcoholic beverages, potentially encouraging customers to come to the site merely to buy alcoholic beverages rather than purchasing in conjunction with other products.

The Police Department has no objections to the applicant's request; however, the property is located within an area of undue concentration, where crime exceeds 20 percent of the City-wide average crime rate, and the ratio of the number of ABC licenses to population within the census tract exceeds the countywide ratio (4 allowed; 10 existing). Although approval of the request would not increase the number of off-sale ABC licenses in the area, it is staff's opinion that allowing concurrent sales of beer and wine in single servings with gasoline and exterior advertising of alcoholic beverages would negatively affect what is already an area of undue concentration of off-sale licenses. Approval of the request could encourage illegal drinking and driving, possibly impacting the health, safety and welfare of the public.

The applicant indicates that there are many other convenience stores in Costa Mesa that sell single servings of alcohol and have exterior advertisement of alcoholic beverages. These convenience stores were likely established before the development and operational standards for convenience stores, which include conditions prohibiting single

servings of alcohol and exterior advertising, were adopted by City Council in 1997. These standard conditions were formally recognized in 2002 under Ordinance 01-30 amending the Zoning Code relating to liquor stores, convenience stores, and mini-markets. The standards are applied to ensure compliance with the necessary findings for approval of a conditional use permit for liquor stores, convenience stores, or mini-markets. Since 1997, the only application for alcohol sales that was allowed single servings (exterior advertising prohibited) was for the re-establishment of a liquor store at 1525 Mesa Verde Drive East, Suite 129. The Planning Commission approved the liquor store with all applicable standard conditions. The applicant appealed their decision to City Council requesting deletion of the condition which prohibited sales of single servings of alcohol. City Council ultimately approved the deletion of that condition based on the fact that the liquor store is located within a shopping center near the golf course, and single servings of alcohol sales serve a convenience for the golfers and residents in the vicinity.

### **GENERAL PLAN CONFORMITY**

The subject site is designated General Commercial on the General Plan. The convenience store use is consistent with the land use designation, which allows a wide range of commercial uses which serve both local and regional needs. Approval of amendments to the conditions of approval will not affect the General Plan consistency of the use.

### **ALTERNATIVES**

The Planning Commission may consider the following alternatives:

1. Deny the application for an amendment of PA-99-49, which would allow the applicant to continue to operate under the existing conditional use permit.
2. Approve the applicant's request for the amendments and make the necessary findings for approval.

### **CONCLUSION**

It is staff's opinion that allowing single servings of beer and wine in conjunction with gasoline sales and exterior advertising of alcoholic beverages would be materially detrimental to the health, safety and general welfare of the public or properties in the vicinity because single servings tend to be purchased for immediate consumption and could encourage illegal activities and/or disturbances to other properties in the vicinity.

Attachments:      Draft Planning Commission Resolution  
                          Exhibit "A" – Findings  
                          Exhibit "B" – Conditions of Approval  
                          Applicant's Project Description and Justification  
                          Location Maps  
                          Plans

cc:      Deputy City Manager - Dev. Svs. Director

Sr. Deputy City Attorney  
City Engineer  
Fire Protection Analyst  
Staff (4)  
File (2)

Conoco Phillips  
3611 Harbor Blvd.  
Costa Mesa, CA 92626

Greg Fick  
Tait and Associates, Inc.  
701 N. Parkcenter Dr.  
Santa Ana, CA 92705

File: 072406PA0634	Date: 071106	Time: 4:15 p.m.
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**RESOLUTION NO. PC-06-54**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF COSTA MESA DENYING PLANNING APPLICATION  
PA-06-34**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY  
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Greg Fick of Tait and Associates, Inc. for Conoco Phillips, owner of real property located at 3067 Bristol Street, requesting to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline and to allow exterior advertisement of alcoholic beverages, in the C1 zone; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 24, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the Planning Commission hereby **DENIES** Planning Application PA-06-34 with respect to the property described above.

**PASSED AND ADOPTED this 24<sup>th</sup> day of July, 2006.**



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Bill Perkins, Chair  
Costa Mesa Planning Commission

STATE OF CALIFORNIA   )  
  )ss  
COUNTY OF ORANGE    )

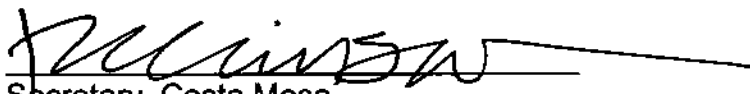
I, R. Michael Robinson, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on July 24, 2006, by the following votes:

AYES:           COMMISSIONERS: PERKINS, EGAN, GARLICH

NOES:           COMMISSIONERS: HALL, FISLER

ABSENT:        COMMISSIONERS: NONE

ABSTAIN:       COMMISSIONERS: NONE

  
Secretary, Costa Mesa  
Planning Commission

**EXHIBIT "A"**

**FINDINGS**

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is not compatible with developments in the same general area. Granting the conditional use permit amendment will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, allowing single servings of beer and wine to be sold in conjunction with gasoline sales and exterior advertising for alcoholic beverages could encourage illegal activities such as drinking and driving, and/or disturbances to other properties in the vicinity due to loitering because single servings of alcohol tend to be purchased for immediate consumption.
- B. The convenience store use is consistent with the general commercial General Plan land use designation, which allows commercial uses that serve both local and regional needs. Approval of the amendments to the conditional use permit will not affect the General Plan consistency of the use.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- D. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.